

BRB No. 91-1114

CAROL A. FRANKLIN)	
)	
Claimant)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	
)	
)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order Approving Compromise Settlement of James W. Kerr, Jr.,
Administrative Law Judge, United States Department of Labor.

Paul M. Franke (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured
employer.

LuAnn Kressley (Thomas S. Williamson, Jr., Solicitor of Labor; Carol A. DeDeo, Associate
Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the
Director, Office of Workers' Compensation Programs, United States Department of
Labor.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH and
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the
Decision and Order Approving Compromise Settlement (90-LHC-1680) of Administrative Law
Judge James W. Kerr, Jr., on a claim filed pursuant to the provisions of the Longshore and Harbor
Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the
findings of fact and conclusions of law of the administrative law judge if they are rational, supported

by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On August 12, 1988, claimant injured her back while in the course of her employment for employer as a shipfitter. Dr. John Cope, claimant's treating physician, diagnosed claimant's condition as a recurrent chronic lumbar strain with overlying psychological depression. In a report dated October 13, 1988, Dr. Cope noted that claimant sustained a prior work-related back injury in 1977 that required prolonged treatment and psychiatric evaluation, as well as treatment and hospitalization for depression. In early December 1988, claimant was hospitalized by Dr. Else Tracy, a psychiatrist, for severe depression and suicidal ideation. Claimant was released on December 28, 1988, at which time Dr. Stefan Prible, a consulting physician, diagnosed mild nerve root irritation at L4-5. Both Drs. Prible and Tracy opined that claimant had a pre-existing psychological condition that was aggravated by her August 12, 1988, work injury.

Claimant filed a claim for benefits under the Act, alleging entitlement to compensation for temporary total disability from December 3, 1988 to September 20, 1989, and medical expenses for treatment provided by Dr. Prible. Claimant also requested a determination as to the extent of any permanent back disability. Thereafter, claimant returned to her usual employment duties with employer. *See* transcript at 6.

At the formal hearing, claimant and employer informed the administrative law judge that they agreed on a settlement of claimant's claim, providing that claimant would receive a lump sum of \$10,500, and reimbursement for necessary future medical care by Dr. Cope, and discharging employer from all past and future claims for compensation, as well as liability for any future psychiatric or psychological treatment. On March 13, 1991, the administrative law judge issued his Decision and Order in which he approved the parties' settlement pursuant to Section 8(i) of the Act.

On appeal, the Director argues that the settlement agreement is not in accordance with Section 8(i) of the Act, 33 U.S.C. §908(i), as amended in 1984, and 20 C.F.R. §702.241(g), since the agreement waives claimant's right to claim compensation for any work-related injuries that may arise in the future. Accordingly, the Director contends that the administrative law judge erred by approving the agreement. Employer responds, urging affirmance.¹

Specifically, the Director challenges language in paragraph 8 of the approved settlement, which provides:

Employer's liability for compensation under the Act for injuries arising out of claimant's employment shall be forever discharged in accordance with the provisions of §8(i) of the Act.

¹For the reasons stated in *Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117 (1993), we reject employer's contentions that the Director lacks standing to appeal the administrative law judge's approval of the settlement agreement.

The Director maintains that this language violates the provisions of Section 8(i) of the Act and Section 702.241(g) of the regulations. 33 U.S.C. §908(i); 20 C.F.R. §702.241(g). According to the Director, the settlement proposed by the parties and approved by the administrative law judge precludes claimant from commencing any claim against employer that may arise in the future. We agree with the Director that the agreement in this case contains language which is not acceptable under Section 8(i) and its implementing regulations.

Section 8(i), as amended in 1984, provides in pertinent part:

Whenever the parties to any claim for compensation under this Act, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress.

33 U.S.C. §908(i)(1988). Section 702.241(g) of the Act's implementing regulations states:

An agreement among the parties to settle a claim is limited to the rights of the parties and *to claims then in existence*; settlement of disability compensation or medical benefits shall not be a settlement of survivor benefits nor shall the settlement affect, in any way, the right of survivors to file a claim for survivor's benefits.

20 C.F.R. §702.241(g) (emphasis added).

Section 702.241(g) complements the statutory provision, as it explicitly states what is implicit in the statute -- that settlement of a claim is "limited to the rights of the parties and to the claims then in existence." *Cortner v. Chevron International Oil Co., Inc.*, 22 BRBS 218 (1989). Thus in *Cortner*, where the claimant filed a claim for bilateral hernias and asbestos-related disease and was alive at the time of the settlement, the Board vacated the parties settlement discharging employer from all claims for compensation, medical benefits, survivor benefits, and death benefits, holding that Section 8(i) of the Act and Section 702.241(g) of the Act's implementing regulations prohibited the settlement of potential future survivor claims which would not arise until the death of the injured worker. *See Cortner*, 22 BRBS at 220. In contrast to *Cortner*, the Board has, in cases involving settlements of claims for a work-related hearing loss, construed those settlements as only applying to the hearing loss claim for which benefits were sought where the settlement agreement as a whole clearly indicated a compromise settlement of the hearing loss in existence at the time of the settlement. *See Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230 (1993); *Kelly v. Ingalls Shipbuilding, Inc.*, 27 BRBS 117, 120 (1993). Thus, in *Poole*, the Board affirmed the administrative law judge's decision to specifically limit a settlement to the present claim, noting that claimant was a retiree and was unlikely to return to the workforce. *See Poole*, 27 BRBS at 235. Similarly, in *Kelly*, the Board affirmed the administrative law judge's approval of a settlement, noting that claimant had worked for employer since 1959, could not file a future hearing loss claim against employer in the absence of future injurious exposure, and that a death benefits claim relating to an occupational

hearing loss is unlikely. *See Kelly*, 27 BRBS at 120.

In the instant case, paragraph 8 of the approved settlement indicates an intent to forever discharge employer's "liability for compensation under the Act for injuries arising out of claimant's employment." Paragraph 5 of the settlement indicates a desire to settle claimant's claim for compensation related to her work injury " and any aggravations thereof while working for employer." Lastly, paragraph 6 of the approved agreement states that while employer shall remain liable for the work-related medical expenses incurred as a result of claimant's treatment with Dr. Cope, "the settlement shall discharge the employer from any past, present or future liability for psychiatric or psychological expenses."

We agree with the Director that the aforementioned language is overbroad. Specifically, the agreement as a whole indicates a compromise settlement of claimant's August 1988 injury, any aggravations while working for employer, and any future psychiatric or psychological expenses. Thus, the settlement agreement cannot be construed as only applying to the claim for which benefits were sought. Rather, the agreement discharges employer from liability for "any aggravations ... while working for employer" as well as "any past, present or future liability for psychiatric or psychological expenses;" claimant, however, has returned to work for employer and, should she sustain a work-related aggravation or injury in the future, she may file a claim for benefits under the Act. *See generally Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45 (CRT)(5th Cir. 1986)(*en banc*). Thus, as Section 8(i) of the Act and 20 C.F.R. §702.241(g) prohibit the settlement of potential future claims, we vacate the administrative law judge's Decision and Order approving the parties' settlement. The case is remanded in order for the administrative law judge to take further actions necessary to the resolution of this claim.²

²In this regard we note that the record in this case does not appear to contain a current medical report as required by 20 C.F.R. §702.242(b)(5), for the administrative law judge to review prior to his approving the parties' proposed agreement on March 19, 1991.

Accordingly, the administrative law judge's Decision and Order Approving Compromise Settlement is vacated and the case is remanded for further proceedings as the parties require to dispose of the claim.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge